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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

MARIA Z. RODRIGUEZ,

Plaintiff and Appellant,

v.

YOLANDA CANCHOLA, as
Administrator, etc.,

Defendant and
Respondent.

B286005

(Los Angeles County
Super. Ct. No. BC602677)

APPEAL from an order and judgment of the Superior Court
of Los Angeles County, Stephanie Bowick, Judge. Affirmed.

Velasco Law Group, Paul D. Velasco and Richard J.
Radcliffe, for Plaintiff and Appellant.

DiJulio Law Group, R. David DiJulio and Tiffany Krog, for
Defendant and Respondent.

Maria Rodriguez sued Yolanda Canchola, the administrator of Rodriguez's stepson's estate, to quiet title under a theory of adverse possession to an apartment building on Magnolia Avenue that Rodriguez and her late husband, Luis Rodriguez, Sr., had once owned as joint tenants. Rodriguez also asserted causes of action against the estate for unjust enrichment and to establish a resulting trust. Following a two-day bench trial, judgment was entered in favor of Canchola. Rodriguez appeals the judgment, as well as the trial court's earlier order denying her motion for summary judgment or, in the alternative, summary adjudication. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The History of the Magnolia Avenue Property

In 1975 Rodriguez and her then-boyfriend, Luis Sr.,¹ moved into an apartment in a four-unit building on Magnolia Avenue in Los Angeles. In 1988 the couple purchased the building as joint tenants. In 1996 Rodriguez executed a grant deed transferring title in the building to Luis Sr. and Luis Jr., as joint tenants. The deed stated the transfer was a "bonafide gift and the grantor received nothing in return."

Rodriguez and Luis Sr. were married in 1999. Luis Sr. died in 2004. After the death of her husband Rodriguez continued to live at the Magnolia Avenue property. She collected rents from the tenants, deposited them into her personal bank account and made payments on the note secured by the property, including escrow payments for insurance premiums and property taxes. Rodriguez did not pay rent to anyone after her husband's death.

¹ We refer to Luis Rodriguez, Sr. as Luis Sr. and his son, Luis Rodriguez, Jr., as Luis Jr. for clarity.

In 2013 Luis Jr. died intestate. Canchola, Luis Jr.'s widow, was appointed administrator of Luis Jr.'s estate. In 2014 Rodriguez submitted a creditor's claim against the estate alleging she had acquired title to the Magnolia Avenue property by adverse possession. In the alternative, Rodriguez alleged Luis Jr. had been unjustly enriched by her payments on the note secured by the property, insurance premiums and property taxes and, as a result, the estate held the property as trustee for her benefit. Canchola rejected Rodriguez's claim in its entirety.

2. Rodriguez's Complaint and Motion for Summary Judgment

On December 1, 2015 Rodriguez filed a complaint against Canchola in her capacity as administrator of Luis Jr.'s estate seeking to quiet title to the Magnolia Avenue property based on a theory of adverse possession. Rodriguez also asserted claims for declaratory relief, unjust enrichment and resulting trust. Canchola answered the complaint, denied the allegations and asserted 23 affirmative defenses, including that Rodriguez's claims were time-barred.

On December 29, 2016 Rodriguez moved for summary judgment or, in the alternative, summary adjudication on her claims and the affirmative defenses. The motion was denied on March 16, 2017.

3. The Bench Trial

The two-day bench trial commenced on July 17, 2017. The court heard testimony from Rodriguez, Canchola and Rodriguez's brother, Jesus Zambada. The trial court issued a tentative decision, which ultimately became its statement of decision, ruling Rodriguez had failed to prove she acquired title to the

property by adverse possession or that Luis Jr.'s estate was unjustly enriched. The court further found Rodriguez's claim for a resulting trust was barred by the applicable statute of limitations and, even if not barred, Rodriguez had failed to prove the estate was holding the property in trust for Rodriguez's benefit. On October 13, 2017 the trial court entered judgment in favor of Canchola on all counts.

DISCUSSION

1. *The Trial Court Did Not Prejudicially Err in Denying Rodriguez's Motion for Summary Judgment or, in the Alternative, Summary Adjudication*

a. *Relevant proceedings*

Rodriguez moved for summary judgment/summary adjudication based solely on Canchola's factually devoid discovery responses. Rodriguez explained she had served form interrogatories, requests for admission and document requests seeking facts supporting Canchola's affirmative defenses. Canchola had responded she was "currently not in possession, custody or control" of any documents or information responsive to the requests. Rodriguez argued those discovery responses conclusively demonstrated no such facts existed and, therefore, Canchola would be unable to prove any such defenses at trial.

In support of her motion Rodriguez submitted a declaration from her attorney attaching Canchola's discovery responses and her own unsigned declaration. Rodriguez's declaration stated her claim to title to the property was "based on my actual open, notorious, exclusive, hostile, and adverse possession of the Property for more than seven (7) years preceding the commencement of this action, filed on December 1, 2015, together

with my payment of all taxes assessed against the Property for the same seven (7) plus years preceding the filing of this lawsuit.” No evidence was submitted to support Rodriguez’s assertions.

In opposition to the motion Canchola argued Rodriguez had failed to meet her initial burden to show there were no triable issues of material fact that entitled her to judgment as a matter of law.

The trial court denied the motion on March 16, 2017.

b. *Because Rodriguez lost at trial, any error in denying her motion for summary judgment was necessarily harmless*

“As a general rule, the denial of summary judgment is harmless error after a full trial covering the same issues.” (*Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407, 1410-1411; accord, *Waller v. TJD, Inc.* (1993) 12 Cal.App.4th 830, 833.) “Although orders denying motions for summary judgment . . . may be reviewed on direct appeal from a judgment after trial, the appellant must nevertheless show the purported error constituted prejudicial, or reversible, error (i.e., caused a miscarriage of justice). [Citation.] In general, an order denying a motion for summary judgment . . . does not constitute prejudicial error if the *same question* was subsequently decided adversely to the moving party after a trial on the merits.” (*Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 343.) “The reason [for the rule] is usually explained this way: “A decision based on less evidence (i.e., the evidence presented on the summary judgment motion) should not prevail over a decision based on more evidence (i.e., the evidence presented at trial).”” (*Transport Ins. Co. v. TIG Ins. Co.* (2012)

202 Cal.App.4th 984, 1011.) Rodriguez fails to present any reason for us not to apply this general rule here.

2. *The Trial Court Did Not Err in Finding Rodriguez Failed To Obtain Title by Adverse Possession*

a. *Evidence at trial*²

Rodriguez testified that in 1996 Luis Sr. asked her to execute a grant deed transferring title to the property to Luis Sr. and Luis Jr. as joint tenants. Luis Sr. said they needed to refinance the loan on the property and, because Rodriguez was not working and Luis Sr. had cancer, it would be better if Luis Sr. and Luis Jr. were on the deed. He told her she would be off title for only a few months. She testified she did not intend to relinquish her ownership of the property forever. At some point

² In lieu of a reporter's transcript of the trial testimony, Rodriguez has submitted a document entitled, "Joint Summary of Testimony at Trial." The joint summary contains a recitation of the testimony of each witness and lists the exhibits admitted into evidence. The document is signed by counsel for both Rodriguez and Canchola and was filed with the trial court the day after the trial concluded. On appeal Canchola argues the joint summary does not adequately provide for meaningful review of the trial testimony and, therefore, the trial court's judgment should be affirmed. (See *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187.) However, Canchola has not disputed the accuracy or adequacy of the recitations of testimony contained in the joint summary, nor does she contest her counsel's stipulation to the summaries contained in the document. Accordingly, the joint summary is a suitable substitute for a reporter's transcript. (See Cal. Rules of Court, rule 8.134.)

after 1996 Rodriguez asked Luis Sr. to add her to the title, but he did not do so.

After Luis Sr. died in 2004, Rodriguez continued to collect rent from the other tenants and deposit the funds in her personal bank account. She then made payments on the secured note, which included escrow payments for insurance premiums and property taxes, from the same bank account. Rodriguez's only other source of income was approximately \$600 per month in social security benefits.

At Luis Sr.'s funeral in 2004 Luis Jr. told Rodriguez he wanted to speak with her; however, the two did not speak again after that day. Rodriguez never communicated to Luis Jr., orally or in writing, that she owned the Magnolia Avenue property. Likewise, Luis Jr. never told Rodriguez he objected to her living there. Rodriguez did not pay rent to Luis Jr. after her husband died.

In 2005, at the urging of her sister, Rodriguez filed a complaint against Luis Jr. alleging 13 causes of action, including fraud and a request to quiet title to the Magnolia Avenue property. Rodriguez testified she never spoke to the attorney who filed the action on her behalf; her sister facilitated the filing of the action. Rodriguez also testified she did not recall whether Luis Jr. had been served with the complaint or if the action had been formally dismissed.³

³ We take judicial notice of the complaint and the docket in the 2005 action (Super. Ct. L.A. County, No. BC331665). (See Evid. Code, §§ 452, subd. (d), 459.) The docket indicates Rodriguez filed a request for dismissal five months after the action was initiated.

Rodriguez's brother, Jesus Zambada, testified he lived at the Magnolia Avenue property from 1975 to 1980 and again from 2009 to the time of trial. Zambada said that, since Luis Sr.'s death in 2004, he had observed Rodriguez collecting rents from other tenants and generally acting as the owner of the property.

Canchola testified she had been married to Luis Jr. for 24 years before his death in 2013. Canchola stated she was aware Rodriguez lived at the Magnolia Avenue property. Although she knew Rodriguez had lived there with Luis Sr. before his death, she did not know how long Rodriguez had lived at the property. Canchola also acknowledged she was aware Rodriguez had been collecting the rents and making payments on the note for many years.

The parties stipulated that all property taxes had been paid for the property from 2004 to the time of trial.

b. *The trial court's ruling*

The trial court issued a six-page statement of decision, including a list of 39 factual findings. As a general matter the court found Rodriguez "was not credible in many areas of her testimony." On the adverse possession claim the trial court found Rodriguez had failed to establish all of the elements of adverse possession. Specifically, Rodriguez did not establish her occupation of the property was open, notorious and hostile. Rather, the court found that Rodriguez's continued occupation of the property after Luis Sr.'s death was with the implicit permission of Luis Jr., and that Rodriguez had failed to communicate to Luis Jr. she was asserting an ownership interest in the property. Further, Rodriguez used the rental income, not her own funds, to pay the note, insurance premiums and property

taxes. The court found that activity was consistent with permissive use of the property.

c. Governing law and standard of review

To establish adverse possession a party has the burden to show his or her use of the property: (1) was open and notorious constituting reasonable notice to the true owner; (2) was hostile to the true owner; (3) occurred for a continuous and uninterrupted period of at least five years; (4) was under a claim of right or color of title; and (5) included payment of property taxes on the disputed parcel for the statutory five-year period. (*Gilardi v. Hallam* (1981) 30 Cal.3d 317, 321; *Preciado v. Wilde* (2006) 139 Cal.App.4th 321, 325; see Code Civ. Proc., §§ 321, 325.) Whether each element has been established is a question of fact. (See *Sevier v. Locher* (1990) 222 Cal.App.3d 1082, 1087; see also *Taormino v. Denny* (1970) 1 Cal.3d 679, 687; *Nielson v. Gibson* (2009) 178 Cal.App.4th 318, 326.)

Generally, a trial court’s factual finding whether the elements of adverse possession have been met will not be reversed on appeal if supported by substantial evidence.⁴ (See *Hinrichs v. Melton* (2017) 11 Cal.App.5th 516, 527; *Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347,

⁴ Rodriguez urges us to apply a de novo standard of review, arguing “the issues presented by this appeal involve pure issues of law (for example, the parties have stipulated to a summary of the testimony at trial . . . and the trial exhibits are noncontroversial)” While the parties may agree on the evidence admitted at trial, there is considerable disagreement as to the inferences to be drawn from that evidence. Further, the trial court was not required to accept the credibility of specific testimony or either party’s conclusions as to its meaning.

362.) However, “there is a conceptual and substantive distinction within the substantial evidence analysis depending on who has the burden of proof on a particular issue, which party prevailed on that issue and who appealed.” (*Valero v. Board of Retirement of Tulare County Employees’ Assn.* (2012) 205 Cal.App.4th 960, 965.) When an appellant challenges a finding on appeal as to which he or she bore the burden of proof at trial, the question for the reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law, not whether there is substantial evidence to support the contrary finding. (*Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership* (2015) 238 Cal.App.4th 370, 390; *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.) “Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached,” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”” (*Sonic Manufacturing Technologies, Inc.*, at p. 466; accord, *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769.) “The appellate court cannot substitute its factual determinations for those of the trial court; it must view all factual matters most favorably to the prevailing party and in support of the judgment.” (*Dreyer’s Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838.)

d. *The evidence does not compel a finding Rodriguez established her occupation of the property was hostile*⁵

Rodriguez contends the evidence compels a finding she occupied the property in a manner hostile to Luis Jr.’s ownership. The “hostility requirement ‘means, not that the parties must have a dispute as to the title during the period of possession, but that the claimant’s possession must be adverse to the record owner, “unaccompanied by any recognition, express or inferable from the circumstances of the right in the latter.’”” (*Gilardi v. Hallam, supra*, 30 Cal.3d at pp. 322-323; accord, *Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, 1077.) In other words, hostility requires “the claimant’s use of the property was made without the explicit or implicit permission of the landowner.” (*Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252.) When a person initially takes possession of property with the consent of the owner, the party seeking to establish title through adverse possession must make an “unqualified and definite renunciation of subordination to the owner [S]uch renunciation must be of sufficient clarity to put the owner on notice that subsequent possession is adverse to his [or her] title, for the very essence of the requirement of ouster is *notice*.” (*Southern Pac. Co. v. City & County of S.F.* (1964) 62 Cal.2d 50, 56; see *Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at p. 362 [“where the owner permits usage of the property, that use is not adverse. However, one who uses land by

⁵ Because we affirm the trial court’s finding Rodriguez failed to establish hostility, we need not address the court’s findings on the other elements of adverse possession.

consent may effect an ouster by ‘unqualified and definite renunciation of subordination to the owner’”].)

Here, the trial court found Rodriguez’s use of the property was permissive. This was a reasonable inference based on the evidence. When Luis Sr. was alive, he allowed his wife to live on the property with him. After Luis Sr.’s death his joint tenancy interest in the property passed to Luis Jr. by operation of law. (See *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1317.) Canchola testified she was aware Rodriguez had lived in the building with Luis Sr. and continued living there after his death. She also testified she had visited the building with Luis Jr. in 2003. It is reasonable to infer Luis Jr. also knew Rodriguez lived in the building with Luis Sr. and continued to live there after Luis Sr.’s death. Based on this evidence, it is certainly possible to construe Rodriguez’s continued residence on the property, collection of rents and payment of the secured note as hostile to Luis Jr.’s ownership rights. However, it is equally possible to conclude Rodriguez’s use was permissive—that after his father’s death Luis Jr., as a matter of filial loyalty, permitted his stepmother to continue living in the building and overseeing rent collection and note payments, as his father had done. The trial court, as fact finder, adopted the latter interpretation of events. The evidence does not compel a finding to the contrary; therefore, we cannot disturb the trial court’s reasonable inferences. (See *Taormino v. Denny, supra*, 1 Cal.3d at p. 687 [when evidence was susceptible to conflicting inferences that use was permissive or hostile, court of appeal could not reverse trial court’s finding when supported by substantial evidence]; see also *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 913 [“it is settled that when conflicting inferences may be drawn from

undisputed facts, the reviewing court must accept the inference drawn by the trier of fact so long as it is reasonable”]; *Juchert v. California Water Service Co.* (1940) 16 Cal.2d 500, 507-508 [fact finder “is authorized to make any logical and reasonable deduction” and “any attempt on the part of an appellate court to draw an inference of fact constitutes “a usurpation of the province of the trial court.” The fact that some inference other than that which has been drawn by a jury may appear to an appellate tribunal to be the more reasonable, affords no sufficient reason for disturbing the inference in question”].)

Because the trial court found Rodriguez’s use of the property was permissive, Rodriguez was required to present evidence she made an unqualified and definite renunciation of Luis Jr.’s rights to the property. (See *Southern Pac. Co. v. City & County of S.F.*, *supra*, 62 Cal.2d at p. 56.) The only evidence Rodriguez presented in this regard was her filing of the 2005 lawsuit to quiet title to the property.⁶ Because the complaint alleged Luis Jr. had no interest in the property, it could be

⁶ The parties dispute whether Luis Jr. was served with a copy of the summons and complaint in the 2005 lawsuit. The trial court denied Rodriguez’s request to take judicial notice of a proof of service purportedly evidencing service on Luis Jr. Rodriguez appeals the trial court’s denial and additionally requests we take judicial notice of the document. Because our analysis is the same regardless of whether Luis Jr. had notice of the lawsuit, we affirm the trial court’s refusal to take judicial notice of the proof of service and deny Rodriguez’s motion for judicial notice. (See *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418 [“litigant must demonstrate that the matter as to which judicial notice is sought is both relevant to and helpful toward resolving the matters before this court”].)

construed as an unqualified and definite renunciation of Luis Jr.'s rights. However, for reasons not disclosed in the record, Rodriguez dismissed her complaint after five months. If the lawsuit constituted an assertion of Rodriguez's rights to the property, the dismissal signified a similarly definite abandonment of that position. Rodriguez presented no other evidence she communicated any hostile intent or otherwise renounced Luis Jr.'s property rights in a way that would interrupt her permissive use of the property.

3. The Trial Court Did Not Err in Finding Rodriguez Failed To Establish a Resulting Trust

“A resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. [Citations.]’ [Citation.] Such a resulting trust carries out and enforces the inferred intent of the parties. [Citations.]’ [Citation.] ‘It has been termed an “intention-enforcing” trust, to distinguish it from the other type of implied trust, the constructive or “fraud-rectifying” trust. The resulting trust carries out the inferred intent of the parties; the constructive trust defeats or prevents the wrongful act of one of them.’ [Citations.] It differs from an express trust in that it arises by operation of law, from the particular facts and circumstances, and thus it is not essential to prove an express or written agreement to enforce such a trust. [Citations.] The trustee has no duties to perform, no trust to administer and no purpose to carry out except the single task of holding onto or conveying the property to the beneficiary.” (*Fidelity National Title Ins. Co. v. Schroeder* (2009) 179 Cal.App.4th 834, 847-848.)

Whether the parties' actions created a resulting trust is a question of fact. (See *O'Neill v. O'Neill* (1957) 147 Cal.App.2d 596, 600 ["[t]he questions whether the deed was intended by plaintiff as a gift to defendant, whether it was executed and delivered pursuant to any prior understanding or agreement of the parties, and whether defendant held the property in trust for plaintiff and defendant were questions of fact for the trial court"]; *Emden v. Verdi* (1954) 124 Cal.App.2d 555, 559 [same]; see also *Fidelity National Title Ins. Co. v. Schroeder*, *supra*, 179 Cal.App.4th at pp. 848, 850 [remanding for trial court to make factual findings regarding whether parties intended to establish resulting trust].) The burden of proving the establishment of a resulting trust is on the party asserting its existence. (*Socol v. King* (1950) 36 Cal.2d 342, 348; *Gomez v. Cecena* (1940) 15 Cal.2d 363, 366-367.) Accordingly, the question for the reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law, not whether there is substantial evidence to support the contrary finding. (*Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership*, *supra*, 238 Cal.App.4th at p. 390; *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.*, *supra*, 196 Cal.App.4th at p. 466; cf. *Viner v. Utrecht* (1945) 26 Cal.2d 261, 267 ["[w]hether the evidence to prove the existence of the [resulting] trust is clear, satisfactory and convincing 'is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.'"]; *In re Marriage of Ruelas* (2007) 154 Cal.App.4th 339, 343 [testimony parties intended record owner to hold property for benefit of her parents was substantial evidence supporting trial court's finding of resulting trust].)

Here, the trial court found, when Rodriguez executed the grant deed to her husband and stepson in 1996, she “understood that she was relinquishing her rights to ownership” in the property. The court concluded, “There was insufficient evidence presented that [the] beneficial interest of [Luis Sr. and Luis Jr.] should not be enjoyed with the legal title or that [Rodriguez] was the true owner of the Property. Based upon the findings above, the Estate has not been holding the Property in trust for the benefit of [Rodriguez].”⁷

On appeal Rodriguez argues the trial court erred because the evidence showed Rodriguez “was the only one . . . who contributed anything to the subject property; the only one who made any payments on the property; the only one who collected rents; and the only one acting as the true owner of the property.” However, Rodriguez has cited no authority for the proposition that these factors are relevant in determining the existence of a resulting trust, nor has Rodriguez explained how these factors bear on the intent of the parties at the time the grant deed was executed—the primary question regarding the establishment of a resulting trust. The trial court heard Rodriguez’s testimony regarding the 1996 grant deed and her intent in relation to it, and the court made the factual determination there was no intent

⁷ The trial court alternatively found Rodriguez’s resulting trust claim was barred by the applicable statute of limitations. We need not address this finding because, even if the claim were not time-barred, we affirm the trial court’s finding no resulting trust was created.

that the property be held for the benefit of Rodriguez. There is no evidence in the record that compels a finding to the contrary.⁸

DISPOSITION

The judgment is affirmed. Canchola is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.

⁸ Rodriguez has not appealed the trial court's ruling there was no unjust enrichment.